July 16, 1999

Ms. Suzanne S. Becker
Schwartz & Eichelbaum, P.C.
800 Brazos Street, Suite 870
Austin, Texas 78701

OR99-1995

Dear Ms. Becker:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 126141.

The Sequin Independent School District (the "district"), which you represent, received a request for certain spread sheet files used by the district for budgetary projections. You do not seek to withhold actual data, but contend that the formulas contained in these files is excepted from disclosure under section 552.111 of the Government Code. You have supplied a representative sample of the responsive information.[1] We have considered the exception you claim and reviewed the submitted information.
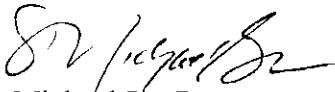
Section 552.111 of the Government Code excepts from required public disclosure interagency and intra-agency memoranda and letters, but only to the extent that they contain advice, opinion, or recommendation intended for use in the entity's policymaking process. Open Records Decision No. 615 at 5 (1993). The purpose of this section is "to protect from public disclosure advice and opinions *on policy matters* and to encourage frank and open discussion within the agency in connection with its decision-making processes." *Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.--San Antonio 1982, writ ref'd n.r.e.) (emphasis added). Section 552.111 does not protect facts and written observation of facts and events that are severable from advice, opinions, and recommendation. *See* Open Records Decision No. 615 at 5 (1993). However, if the factual information is so inextricably intertwined with material involving advice, opinion, or recommendation as to make

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[1]We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

separation of the factual data impractical, that information may be withheld. Open Records Decision No. 313 (1982). Information protected by section 552.111 must be prepared by a person or entity with an official reason or duty to provide the information in question. Open Records Decision No. 429 (1985); *See also* Open Records Decision Nos. 283 (1981), 273 (1981). The ultimate test to which these factors are directed is whether the governmental entity intended the advice, opinion, or recommendation to play a role in its decision-making process. *See* Open Records Decision No. 464 (1987). In this case, you relate that the materials were produced by a district employee who designed them for use by the district as a budgeting tool, and that these materials were so used. From your representations and our inspection of the subject materials, we conclude that these files were intended for use in the district's decision making process, and that the factual information contained therein is so inextricably intertwined with material involving advice, opinion, or recommendation as to make separation of the factual data impractical. The district may therefore withhold these files under section 552.111 of the Government Code.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

Michael Jay Burns
Assistant Attorney General
Open Records Division

MJB/ch

Ref: ID# 126141

Encl.   Submitted documents

cc: Ms. Corlea S. Plowman
      Seguin Educators Association
      612 East College Street
      Seguin, Texas 78155
      (w/o enclosures)